

Appendix A

UNIFIED DEVELOPMENT ORDINANCE*

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***Editor's note**—Printed herein is the Unified Development Ordinance for Lee County, North Carolina, adopted by the county council on Sept. 19, 2005. Amendments to the original ordinance are indicated by parenthetical history notes following amended provisions. For stylistic purposes, a uniform system of punctuation, capitalization, headings, catchlines, citation to state statutes, and expression of numbers in text has been used to conform to the Code. Obvious misspellings have been corrected without notation and material in brackets [] has been added for clarity.

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Summary: This article describes how to obtain a permit under the Unified Development Ordinance. It establishes the rules for submitting a complete application, the agencies responsible for processing and rendering a decision, and the general criteria for approval. Each section describes the rights granted by the application under "Scope of Approval." Subsections relating to "recording" this application set forth record keeping procedures.

3.1 General procedures.

3.1.1 *Application process and official filing date.* The specific procedures followed in reviewing various applications for development approval may vary. Generally, the procedures for all applications have four common elements: (1) submittal of a complete application, including required fee payment and appropriate information; (2) review of the submittal by appropriate staff and boards; (3) action to approve, approve with conditions, or deny the application; and (4) issuance of a permit, based on complete and approved plans.

3.1.1.1 *Pre-application conference.* The applicant should meet with the department of community development to discuss the nature of the proposed application, application submittal requirements, the procedure for action, and the standards for evaluation of the application.

3.1.2 Completeness review.

3.1.2.1 The department of community development shall review any application required by this article for completeness. No application shall be deemed complete unless all of the information required by appendix B is included, and all filing fees required by this ordinance. Current application materials shall be made available in the department of community development offices. Such applications shall be filed in advance of any public hearing or public meeting required pursuant to this article or statute.

3.1.3 Local planning board.

3.1.3.1 Each local planning board shall hold regularly scheduled public hearings to receive and review public input on those items required by this ordinance and the G.S.. On those items where it has review authority, the board shall recommend to the appropriate governing body approve, approve with conditions, or deny applications. The department of community development will submit the proposed item to the governing body for its consideration.

3.1.3.2 The department of community development shall provide for minutes to be written and retained, shall record the evidence submitted within the allotted hearing time, and shall include a summary of the considerations and the action of the board.

3.1.4 City council, county commission, and town board of commissioners.

3.1.4.1 The governing bodies of the City of Sanford, Town of Broadway, and Lee County shall hold regularly scheduled public hearings to act upon all items required by this ordinance and the G.S. to be considered by them. The governing bodies shall decide whether or not to approve, approve with conditions (if applicable), or deny such applications.

3.1.4.2 The clerk to the board shall provide for minutes to be written and retained, shall record the evidence submitted within the allotted hearing time, and shall include a summary of the considerations and the action of the respective governing body.

3.1.5 Public hearings and decisionmaking procedures.

3.1.5.1 *Scope of action.* The reviewing body may take any action on the application that is consistent with the notice given, including approval of the application, conditional approval (if applicable), or denial. The reviewing body may allow minor amendments to the application which: (1) proposes fewer dwelling units, floor area or impervious surface than that requested on the original application; (2) reduces the

impact of the development; or (3) reduces the amount of land involved from that indicated in the notices of the hearing. The reviewing body shall not, in any case, permit: a greater amount of development, a use falling in a different general use category, a larger land area than indicated in the original application, or a greater variance than was indicated in the notice. In addition, the reviewing body shall not reduce or eliminate conditions for a conditional use district unless a new notice is provided prior to the meeting at which a final decision is to be made.

3.1.5.2 *Legislative and advisory public hearings procedures.*

3.1.5.2.1 *Purpose.* The purpose of a legislative or advisory review public hearing is to provide the public an opportunity to be heard. Unlike quasi-judicial hearings, a legislative proceeding does not require procedural due process protections, such as right of the parties to offer evidence, sworn testimony, or findings of fact. Like quasi-judicial hearings, legislative hearings are public hearings preceded by notice to interested parties. Public hearings are required for legislative review hearings, such as amendments to the comprehensive plan, amendments to this ordinance (including zoning provisions of this ordinance and the zoning map), and applications for a planned unit development.

3.1.5.2.2 *Conduct of hearing.* Testimony may be presented by any member of the public, but need not be submitted under oath or affirmation. The decision-making body may establish a time limit for testimony.

3.1.5.2.3 *Record of proceedings.* The body conducting the hearing shall record the minutes of the proceedings by any appropriate means as prescribed by rule and consistent with G.S. Chapter 132. The department of community development will provide the record upon request by application and payment of a fee set by the County of Lee (to cover duplication costs.)

3.1.5.2.4 *Notice provisions.* The notice requirements for legislative and advisory proceedings, including amendments to this ordinance, or the official zoning map, shall be that as provided in G.S. §§ 153A-323, 153A-343, 160A-364, and 160A-384. More specifically, a notice of the hearing shall be published once a week for two successive calendar weeks. The notice shall be published the first time not less than ten days nor more than 25 days before the date fixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.

3.1.5.3 *Quasi-judicial public hearing procedures.*

3.1.5.3.1 *Applicability.* The provisions of this section apply to any application for a special use permit, variance, appeal, or any other quasi-judicial action. In making quasi-judicial decisions, the decision-makers must investigate facts, or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them, as a basis for their official action, and to exercise discretion of a judicial nature. In the land use context, these quasi-judicial decisions involve the application of land use policies to individual situations, such as variances, Special Use permits, and appeals of administrative determinations. These decisions involve two key elements: 1.) the finding of facts regarding the specific proposal and 2.) the exercise of some discretion in applying the standards of the ordinance. Due process requirements for quasi-judicial decisions mandate that certain standards be observed when these decisions are made. This includes a hearing with the right of the parties to offer evidence, have sworn testimony, and have findings of fact supported by competent, substantial, and material evidence. See *Lancaster County v. Mecklenburg County*, 334 N.C. 496, 434 S.E.2d 604 (1993).

3.1.5.3.2 *Rulemaking authority.* The planning commission and the County of Lee may adopt general rules which apply to quasi-judicial public hearings. These public hearings may relate to a special use permit or to a proceeding before the board of adjustment.

3.1.5.3.3 *Conduct of hearing.* Any person or persons may appear at a public hearing and submit evidence, either individually or as a representative. Each person who appears at a public hearing shall state, for the record, his or her name, address, and if appearing on behalf of an organization or group, its name and mailing address. The hearing shall be conducted in accordance with the procedures set forth in G.S. §§ 153A-345 and 160A-388.

3.1.5.3.4 *Notice provisions.* The adjacent property owners to a quasi-judicial hearing will be sent a notice of hearing (by the department of community development) not less than 15 days before the hearing. The notice shall state the date, hour, place, and nature of the hearing, shall list the particular sections of this ordinance involved, and shall give a short and plain statement of the application. Notice shall be sent by first-class mail.

3.1.5.4 *Administrative decisions.*

3.1.5.4.1 Administrative decisions are routine, non-discretionary zoning ordinance implementation matters carried out by the staff, including issuance of permits for permitted uses. In general, the department of community development is a purely administrative agent following the literal provisions of this ordinance. The department of community development may engage in some fact finding, (for example, as in making an initial determination as to whether a nonconforming use was in existence at the time a zoning provision was adopted). This involves determining objective facts that do not involve an element of discretion. In contrast to quasi-judicial hearings, administrative decisions are made without a hearing at all, with the staff member reviewing an application to determine if it is complete and compliant with objective standards set forth in this ordinance. *Lancaster County v. Mecklenburg County*, 334 N.C. 496, 434 S.E.2d 604 (1993).

3.1.5.4.2 The procedures for processing administrative permits, such as zoning clearance permit, are set forth in the sections of this ordinance pertaining to such permits.

3.1.5.4.3 No notice shall be required for an administrative permit issued pursuant to section 3.2 of this ordinance unless otherwise provided by this ordinance or by law.

(Ord. of 9-19-2005)

3.2 Administrative permits.

3.2.1 *Purpose.* The purpose of this section is to prescribe procedures for permits which do not require quasi-judicial or legislative notice or a public hearing. A public hearing is not required for permits set forth in this section for one or more of the following reasons:

3.2.1.1 If required, public hearings have already been conducted relating to the permit application. The permit application procedure was designed to ensure that the proposed use complies with a previously approved subdivision plat, site plan, specific plan, comprehensive plan amendment, or conditional rezoning (e.g., zoning clearing, certificate of occupancy).

3.2.1.2 The proposed use is permitted by right in the applicable zoning district (e.g., zoning clearance, certificate of occupancy).

3.2.1.3 The permit is subject to unique provisions of state or federal law which restrict the County of Lee's discretion and which require expedited review.

3.2.2 *Applicability.*

3.2.2.1 The provisions of this section shall apply subsequent to approval of any site plan or final site plan as set forth in section 3.6 of this ordinance. Administrative permits include:

- A zoning clearance permit (subsection 3.2.3, below).
- A building permit (subsection 3.2.4, below).

- A sedimentation and pollution control permit (subsection 3.2.5, below).
- A sign permit (subsection 3.2.6 , below).
- Temporary use permit (subsection 3.2.7, below).

3.2.2.2 All development permits applicable to a proposed development must be issued in accordance with the provisions of this ordinance, prior to any development activity. Permits are required for all development, unless otherwise excepted, to ensure compliance with the various adopted codes, standards, and laws and to ensure consistency with the Comprehensive Plan and policies of the County of Lee.

3.2.3 *Zoning clearance permit.*

3.2.3.1 *Application.* Upon adoption of this ordinance, buildings or structures shall be erected or constructed, and uses shall be established, only on parcels of land that have been created in conformance with this ordinance. To construct any structure, use any land, or change the use* of any structure or land, a zoning clearance permit must be obtained from the department of community development and a building permit obtained from the appropriate building inspections department. (*Note: A change of use shall require a zoning clearance permit only when the change of use would otherwise require a building permit.)

3.2.3.2 *Restriction on single-family detached dwelling lots.* In any zoning district which permits single-family detached dwellings, no zoning clearance permit shall be issued for a use or dwelling on the same lot as an existing detached single-family dwelling except as provided for in this ordinance.

3.2.3.3 *Additions to existing structures.*

3.2.3.3.1 The provisions of this section apply to any expansion or addition to an existing conforming structure or building. This ordinance classifies additions or expansions of existing structures into three categories for the purposes of identifying what design standards shall apply. Expansion of nonconforming structures is regulated in article 13 of this ordinance.

- (a) Low impact additions/expansions shall be defined as an addition that equates to less than 25 percent to the total gross floor area (GFA) of a site and requires less than ten additional off-street parking spaces. Low impact (Type 1) expansions shall be exempt from all UDO design improvements, except that the building expansion shall conform to the UDO standards for building setbacks.
- (b) Moderate additions/expansions shall be defined as:
 - A proposed addition that is greater than 25 percent but less than 50 percent total of the total GFA of a site, and/or
 - A proposed addition that requires ten or more additional off-street parking spaces.

Moderate additions/expansion shall provide the following site improvements from this ordinance:

- Street yard buffer as set forth in section 7.7 of this ordinance. The street yard buffer shall not be required where existing buildings encroach into the area that would be required to provide such a buffer. This exemption does not include existing parking areas.
 - Parking area landscaping as set forth in section 7.6 of this ordinance.
 - If abutting single-family residential developed properties, a buffer (screening) yard as set forth in section 7.5 of this ordinance.
 - Conformity to the standards for article in terms of off-street parking and driveway design.
- (c) Substantial additions/expansions shall be defined as proposed additions that equate to 50 percent or more of total GFA of a site. Construction of a "substantial addition/expansion" shall require compliance with the full design and dimensional requirements of the UDO.

3.2.3.3.2 Required improvements for additions or expansion to existing structures as identified in this subsection 3.2.3.2 shall be applied to the portion of a development site where the addition is being constructed. The area to be included for improvements shall be determined by the administrator.

3.2.3.3.3 In situations where compliance with subsection 3.2.3.3.1 of this ordinance could only be achieved through the removal of an existing building space, the administrator shall have the authority to reduce or eliminate these requirements where (and only where) such requirements are in conflict with an existing building(s).

3.2.3.4 *Changes of use.*

3.2.3.4.1 A change of use shall require a zoning compliance permit only when the change of use would otherwise require a building permit. A "change of use" shall be further defined as "a change from one principal use of a building or land to another principal use of the building or land whether or not there is an increase in the size of the existing building or extent of the use of land". Furthermore, for the purposes of zoning, a change of use shall be determined based on the more broad land use groupings of Table 4.6-1 of this UDO (i.e. "Institutional and Civic" vs. "Retail Trade"). If it is determined that no change of use has occurred, no design standards of this UDO shall be required.

3.2.3.4.2 If it is determined that a change of use has occurred, the administrator must then determine what design standards should apply.

(a) *Minor change of use.* This group includes the following:

- A change of use has occurred, but no additional parking is required.
- A change of use has occurred and additional parking is required but is less than ten total spaces.

When a minor change of use is determined, no additional udo design or dimensional standards shall be applied except that uses abutting single-family residential developed properties must provide a buffer (screening) yard as set forth in section 7.5 of this ordinance.

(b) *Major change of use.* For a change of use that provides ten or more additional total parking spaces, the following UDO site improvements shall be required:

- Street yard buffer as set forth in section 7.7 of the UDO. The street yard buffer shall not be required where existing buildings encroach into the area that would be required to provide such a buffer. This exemption does not include existing parking areas.
- Parking area landscaping as set forth in section 7.6 of the UDO.

If abutting single-family residential developed properties, a buffer (screening) yard as set forth in section 7.5 of the UDO.

3.2.3.5 *Exceptions.* The provisions of the section 3.2 shall not apply to any legal nonconforming use established in accordance with provisions of article 13 of this ordinance.

3.2.3.6 *Procedures.* The applicant shall file a complete application on the prescribed form for a zoning clearance permit with the administrator. If site plan review is required in accordance with section 3.6 of this ordinance, the approved site plan must be submitted with application for a zoning clearance. If the proposed development or development activity is not subject to site plan review pursuant to section 3.6, a plot plan must be filed for review as set forth in Figure 3.2-1. The requirements for a plot plan are:

- Location of structure(s), including but not limited to all proposed decks, steps, or other similar structural improvements
- Building setbacks
- Location of off-street parking

- Location of 100-year floodplain

Following review, the administrator shall approve, approve with conditions, or deny the application for a zoning clearance permit. Applications that are denied shall have the reasons for denial, in writing, attached to the application. An appeal of the decision of the administrator is allowed as provided for in section 3.7 (see also Figure 3.2-1).

3.2.3.7 *Approval criteria.* The zoning clearance permit shall be issued by the administrator only if the application complies with all pertinent provisions of this ordinance, and any approved special use permit, conditional rezoning, or site plan.

3.2.3.8 *Validity.* The zoning clearance permit shall be valid for its established use if:

- The use is in compliance with applicable codes.
- A building permit has been obtained by the applicant within six months of issuance of the zoning clearance permit.

If 12 months elapse without the issuance of a building permit, the zoning clearance permit shall expire. Resubmission of plans and materials and an application for a new zoning clearance permit, including applicable fee(s), shall be required for any approved project that did not commence construction within that 12-month period.

3.2.3.9 *Request for extension to install improvements.* The applicant may submit a written request for extension to the administrator when an application for a certificate of compliance cannot be approved because certain improvements cannot be completed or installed due to adverse weather conditions or other reasonable factors. The applicant shall submit to the Administrator the following information: (1) a specific description of the factor(s) hindering completion or installation of the required improvement(s); and (2) a self-imposed deadline for completion of the unfinished improvement(s). In no event shall the timeline for completion of said improvements extend for more the one year beyond the date of the request. Failure to complete improvements within stated timeline may result in a violation of this ordinance and shall be prosecuted in accordance with section 1.6.

3.2.4 *Building permits and/or certificates of occupancy.*

3.2.4.1 Issuance of all building permits and/or certificates of occupancy shall come under the authority of the Inspections Division of the Sanford/Lee Community Development Department. Authority to issue such permits and/or certificates shall be based on the most recently adopted version of the North Carolina State Building Codes.

3.2.4.2 New construction projects which shall require a building permit and/or certificate of occupancy shall also require a zoning clearance permit as set forth in this section 3.2.

3.2.5 *Sedimentation and erosion control permit.* The applicant shall obtain a sedimentation and erosion control permit from the State of North Carolina for any land-disturbing activity subject to the Sedimentation and Pollution Control Act of 1973 (G.S. §§ 113A-50 to 113A-458), as may be amended from time to time.

3.2.6 *Sign permit.* See section 11.3 of this ordinance.

3.2.7 *Temporary use permit.* No temporary use subject to the temporary use regulations (section 5.34) of this ordinance shall be established unless and until a zoning clearance permit has been issued by the department of community development.

Figure 3.2-1 - ADMINISTRATIVE PERMIT RENEW PROCESS:
 *Includes only administrative permit applications that are not required to obtain site plan approval as set forth in § 3.7 of this Ordinance.

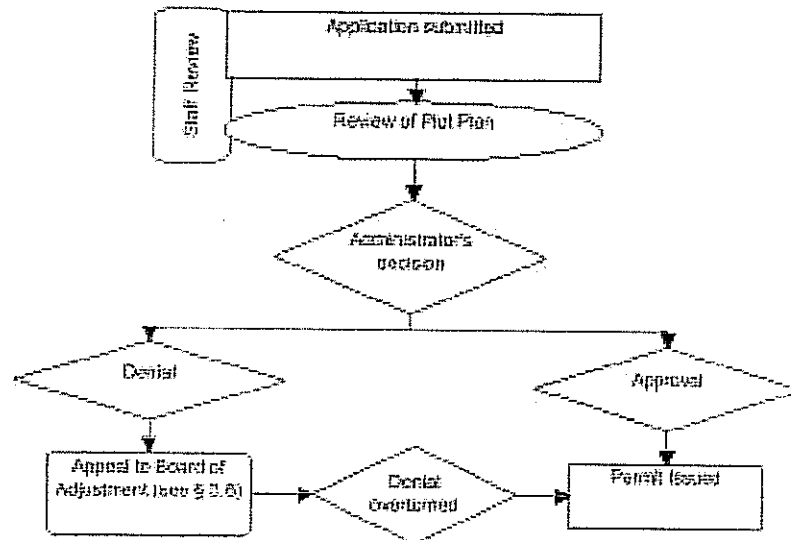


Figure 3.2-1

(Ord. of 9-19-2005)

3.3 Zoning map and text amendments.

3.3.1 Purpose and applicability.

- (a) The purpose of this section is to establish uniform procedures for processing changes to the official zoning map ("rezonings") or for amendments to the text of this ordinance.
- (b) The provisions of this section apply to any application for an amendment to the text of this ordinance, or for an amendment to the official zoning map. An amendment to the official zoning map which reclassifies property from one zoning district to another is known as a "re zoning."

3.3.2 Initiation of a zoning map amendment (re zoning). Any person, board, department or commission may apply for a change in zoning district boundaries (re zoning), excluding applications for conditional use districts as set forth in section 3.4 of this ordinance. An amendment to the official zoning map (a "re zoning") may be initiated by filing an application with the department of community development. Before any application is accepted by the department of community development, the applicant should meet with the department of community development. The purpose of the pre-application meeting is to discuss, in general, the procedures and requirements for a zoning amendment request. During the conference, the department of community development will identify the submittal requirements.

3.3.3 Decision.

- 3.3.3.1 The department of community development shall transmit the application to the respective local planning board (see section 2.3) for consideration at its next available meeting. In the case of a "small-scale" or a conditional zoning petition as cited in G.S. §§ 160A-382 and 153A-342, the

community development staff shall also transmit a statement analyzing the "reasonableness" of the proposed rezoning (as required in said statutes). Notice of the public hearing shall be provided as set forth in subsection 3.1.5 of this ordinance. The planning board shall consider the request and act to recommend approval or denial of the zoning amendment in accordance with the procedures for a legislative hearing as set forth in subsection 3.1.5.2 of this ordinance and in accordance with G.S. § 160A-387 and § 153A-344. A majority vote is required for the planning board to recommend approval or denial of a zoning map amendment. The planning board shall transmit its recommendation to the governing body for consideration. In accordance with G.S. 160A-383 and 153A-341, this recommendation shall include a statement that addresses: (a) the consistency/inconsistency of the petition with the Sanford/Lee County 2020 Land Use Plan, (b) why the board considers the petition to be reasonable/unreasonable, and (c) why the board considers the petition to be in the public interest/not in the public interest.

3.3.3.2 Upon the recommendation of the planning board, the department of community development shall then transmit the application to the appropriate governing body. The governing body shall consider the request and act to approve or deny the zoning map amendment by a majority vote unless a protest petition is filed as provided in subsection 3.3.3.3, below. The governing body shall approve or deny the zoning map amendment in accordance with the procedures for a legislative hearing as set forth in subsection 3.1.5.2 of this ordinance. The governing body is not bound by the recommendation of the planning board. In accordance with G.S. §§ 160A-383 and 153A-341, the decision of the governing body shall include a statement that addresses: (a) the consistency/inconsistency of the petition with the Sanford/Lee County 2020 Land Use Plan, (b) why the board considers the petition to be reasonable/unreasonable, and (c) why the board considers the petition to be in the public interest/not in the public interest.

3.3.3.3 A three-fourths supermajority vote of the members of the governing body shall be required if a protest petition is filed which conforms to the requirements of G.S. §§ 160A-385 and 160A-386. A protest petition shall not be accepted unless it conforms to the requirements set forth in Appendix B to this ordinance. The protest provision of G.S. §§ 160A-385 and 160A-386 shall apply to the unincorporated as well as the incorporated areas and ETJ of Lee County.

3.3.4 *Approval criteria.* Whenever the public necessity, safety, or general welfare justifies such action, and after obtaining the recommendation by the planning commission, the governing body may change zoning district boundaries. The planning board and the governing body should consider the following factors in reviewing an application for a rezoning:

- The size of the tract in question.
- Whether the proposal conforms with and furthers the goals of the Comprehensive Plan, other adopted plans, and the goals, objectives, and policies of this ordinance.
- Any change of character in the area due to installation of public facilities, other zone changes, new growth trends, deterioration, and development.
- The zoning districts and existing land uses of the surrounding properties. Whether the rezoning is compatible with the adjacent neighborhood, especially residential neighborhood stability and character.

3.3.5 *Initiation of a zoning text amendment.*

3.3.5.1 Any person, board, department, or commission may apply for a change in the text of this Unified Development Ordinance. An amendment to the text of this ordinance may be initiated by filing an application with the department of community development.

3.3.6 *Decision.*

3.3.6.1 The department of community development shall transmit the application to the joint planning commission (see section 2.4) for consideration at its next available meeting. Notice of the public hearing shall be provided as set forth in subsection 3.1.6 of this ordinance. The joint planning commission shall consider the request and act to recommend approval or denial of the zoning text amendment in accordance with the procedures for a legislative hearing as set forth in subsection 3.1.7.4 of this ordinance. A majority vote is required for the joint planning commission to recommend approval or denial of a text amendment.

3.3.6.2 Upon the recommendation of the joint planning commission, the department of community development shall then transmit the application to the respective local planning board (see subsection 2.3) for consideration at its next available meeting. Notice of the public hearing shall be provided as set forth in subsection 3.1.6 of this ordinance. The local planning board shall consider the request and act to recommend approval or denial of the zoning text amendment in accordance with the procedures for a legislative hearing as set forth in subsection 3.1.7.4 of this ordinance and in accordance with G.S. § 160A-387 and § 153A-344. A majority vote is required for the local planning board to recommend approval or denial of the text amendment. In accordance with G.S. §§ 160A-383 and 153A-341, the decision of the governing body shall include a statement that addresses: (a) the consistency/inconsistency of the petition with the Sanford/Lee County 2020 Land Use Plan, (b) why the board considers the petition to be reasonable/unreasonable, and (c) why the board considers the petition to be in the public interest/not in the public interest.

3.3.6.3 Upon the recommendation of the local planning board, the department of community development shall then transmit the application to the appropriate governing body. The governing body shall consider the request and act to approve or deny the text amendment by a majority vote. The governing body shall approve or deny the zoning amendment in accordance with the procedures for a legislative hearing as set forth in subsection 3.1.7.4 of this ordinance. In accordance with G.S. §§ 160A-383 and 153A-341, the decision of the governing body shall include a statement that addresses: (a) the consistency/inconsistency of the petition with the Sanford/Lee County 2020 Land Use Plan, (b) why the board considers the petition to be reasonable/unreasonable, and (c) why the board considers the petition to be in the public interest/not in the public interest.

3.3.7 *Re-application for a denied amendment.*

3.3.7.1 In the event that an application for a rezoning or text amendment is denied by the governing body, the department of community development shall refuse to accept another application for the same amendment within one year of the original hearing. For denied zoning map amendments, this rule shall apply to any attempt to rezone to a district that was denied on the same property or any portion of the same property within one year of the original hearing.

3.3.7.2 Reapplication from a denied general use district to a conditional zoning district shall constitute a different request and shall not be subject to the one-year prohibition as set forth in this subsection 3.3.7 if it can be demonstrated that the proposed conditional zoning district provides new substantive elements that could not be addressed via the denied attempt to obtain a general use zoning change. This determination shall be under the authority of the administrator.

3.3.8 *Scope of approval.* The approval of a zoning map or text amendment does not authorize any development activity. Application for a zoning clearance permit and any other administrative permits required by section 3.2 of this ordinance shall be required.

(Ord. of 9-19-2005)

3.4. Conditional zoning districts.**3.4.1 Purpose.**

3.4.1.1. Conditional zoning districts are zoning districts in which the development and use of the property is subject to predetermined standards and rules, regulations, or other conditions imposed as part of the legislative decision creating the district and applying it to the particular property. A conditional zoning district allows particular uses to be established only in accordance with specific standards and conditions pertaining to each individual development project. Some land uses are of such a nature or scale that they have significant impacts on both the immediate surrounding area and on the entire community, which cannot be predetermined and controlled by general district standards. There are also circumstances in which a general district designation allowing such a use by right would not be appropriate for a particular property even though the use itself could, if properly planned, be appropriate for the property consistent with the objectives of these regulations, the adopted comprehensive plan, and adopted district and area plans.

3.4.1.2 There are two types of conditional zoning districts available:

- Conditional zoning district type 1
- Conditional zoning district type 2

3.4.2 Conditional zoning district type 1.

3.4.2.1 The conditional zoning district type 1 is defined as a conditional zoning district created as a stand-alone district with its own unique conditions. Under a conditional zoning district type 1, an owner would have the freedom to develop his/her own unique list of permitted uses and design standards. It is also understood that such a district would need to be designed so as to maintain the integrity and characteristics of the surrounding community as well as conform to the spirit and intent of the zoning ordinance. a conditional zoning district type 1 would be most suitable in situations where none of the current conventional zoning districts accommodate the desired use(s), such as a large mixed-use planned development in which the owner/developer has a clear vision as to how the property is to be developed.

3.4.2.2 Only the property owner(s) of a proposed conditional zoning district type 1 shall be eligible to apply for rezoning to a conditional zoning district.

3.4.2.3 The owner shall specify the use(s) of the property and shall propose additional conditions to ensure compatibility between the development and the surrounding neighborhood. The conditions shall include all of the following (as applicable):

- The location on the property of the proposed use(s);
- The number of dwelling units;
- The location and extent of supporting facilities such as parking lots, driveways, and access streets;
- The location and extent of buffer areas and other special purpose areas;
- The timing of development;
- The location and extent of rights-of-way and other areas to be dedicated for public purposes;
- And any other such conditions the applicant may wish to propose.

The application shall include a site plan and detailed narrative text that specifies the conditions that will govern the development and use of the property.

3.4.2.4 It is required that applicants consult with the community development staff prior to submission of an application for a conditional zoning district. The community development staff can assist the applicant in determining preliminary assessments regarding the appropriateness of the proposed conditions with respect to existing zoning and surrounding land use.

3.4.2.5 Applications for conditional zoning districts shall be submitted and reviewed in the same procedural manner as set forth in sections 3.3.2 through 3.3.4 of this ordinance.

3.4.3 *Conditional zoning district type 2.*

3.4.3.1 The conditional zoning district type 2 is defined as a conditional zoning district created for the purpose of allowing a property owner to place additional conditions upon an existing, equivalent conventional, general use zoning district. Conditional zoning district type 2 would be the preferred zoning approach if a petitioner desired to (a) to reduce or narrow the number of permitted uses and/or (b) impose higher level design standards than that which exists within an equivalent general use zoning district. Conditional zoning district type 2 would also be practical in situations where a petitioner desires to install or construct additional buffers or other physical features that would serve to increase the protection afforded neighboring properties and/or the appearance of the proposed development.

3.4.3.2 Only the property owner(s) of a proposed conditional zoning district type 2 shall be eligible to apply for rezoning to a conditional zoning district. The owner shall specify the use(s) of the property and shall propose additional conditions to ensure compatibility between the development and the surrounding neighborhood. The conditions shall include all of the following (as applicable):

- The location on the property of the proposed use(s);
- The number of dwelling units;
- The location and extent of supporting facilities such as parking lots, driveways, and access streets;
- The location and extent of buffer areas and other special purpose areas;
- The timing of development;
- The location and extent of rights-of-way and other areas to be dedicated for public purposes;
- And any other such conditions the applicant may wish to propose.

3.4.3.3. The application shall include a site plan and detailed narrative text that specifies the conditions that will govern the development and use of the property.

3.4.3.4 It is required that applicants consult with the community development staff prior to submission of an application for a conditional zoning district. The community development staff can assist the applicant in determining preliminary assessments regarding the appropriateness of the proposed conditions with respect to existing zoning and surrounding land use.

3.4.3.5 Applications for conditional zoning districts shall be submitted and reviewed in the same procedural manner as set forth in sections 3.3.2 through 3.3.4 of this ordinance.

3.4.4 *Scope of approval.*

3.4.4.1 Any conditions in association with a conditional zoning district and so authorized shall be perpetually binding upon the property included in such conditional zoning district unless subsequently changed or amended as provided for in this article.

3.4.4.2 The applicant shall obtain certification of the approval of the conditional use district, and shall record the legal description and accompanying map exhibit/site plan in the office of the register of deeds of Lee County.

3.4.4.3 If for any reason any condition imposed pursuant to these regulations is found to be illegal or invalid, or if the applicant should fail to accept any of the conditions of approval, the conditional zoning district shall be deemed null and void and the governing body shall initiate proceedings to rezone the property to its previous zoning classification. Continued or repeated violation of the conditions in an approved conditional zoning district shall constitute an applicant's failure to accept said conditions.

3.4.4.4 Any violation of a condition in an approved conditional zoning district shall be treated the same as any other violation of this ordinance and shall be subject to the same remedies and penalties as any such violation.

3.4.4.5 The approval of a zoning map or text amendment does not authorize any development activity. Application for a zoning clearance permit and any other administrative permits required by section 3.2 of this ordinance shall be required.

3.4.5 *Re-application for a denied amendment.* Reapplication after denial of an application for a conditional zoning district shall be treated in the same manner as set forth in subsection 3.3.7 of this ordinance. (Ord. of 9-19-2005)

3.5. Special use permits.

3.5.1 *Applicability.*

3.5.1.1 The purpose of this section is to establish procedures and standards for the processing and approval of special use permits. Special use permits provide a form of discretionary approval for certain uses which are generally compatible with the land uses permitted by right in a zoning district, but which require individual review of their location, design, and configuration. Special uses ensure the appropriateness of the use at a particular location within a given zoning district.

3.5.1.2 Only those uses that are enumerated as special uses in a zoning district, as set forth in the use matrix (section 4.6, Table 4.6-1 of this ordinance), shall be authorized by the board of adjustment.

3.5.2 *Approval procedure.*

3.5.2.1. No special use permit shall be authorized, developed, or otherwise carried out until the applicant has secured approval of the special use by the board of adjustment and approval of a final site plan by the administrator.

3.5.2.2. Applications for special use permit approvals shall be filed with the administrator as illustrated in Figure 3.5-1. Pre-application meetings with the administrator prior to filing are required.

3.5.2.3. Major site plan applications (see Appendix B) shall be filed concurrently with special use permit applications. The information shall be provided to the board of adjustment during their deliberations.

3.5.2.4. The board of adjustment shall conduct a quasi-judicial hearing in accordance with the requirements of subsection 3.1.7 of this ordinance. The board of adjustment shall conduct a quasi-judicial hearing and shall deny the request, approve the request; or approve the request with conditions.

3.5.2.5. The board of adjustment may place conditions on the use as part of the approval to assure that adequate mitigation measures are associated with the use. The conditions shall become a part of the special use permit approval and shall be included in the final site plan application.

3.5.2.6. Violations of any of the conditions shall be treated in the manner as set forth in section 1.6 of this ordinance.

3.5.2.7. An application for a special use permit that has been denied may be resubmitted only if there has been a substantial change in circumstances, as determined by the administrator, or if substantial revisions have been made to the application for development approval (see subsection 3.5.6 for further restrictions on reapplication).

3.5.2.8. Minor field alterations or minor revisions to approved special uses may be approved by the administrator if the special use still meets the intent of the standards established with the original approval. Minor alteration/revisions shall be limited to changes that do not increase the intensity, density, or character of the use. If the administrator determines that the change is not minor, the applicant shall apply for a revised special use permit. The applicant may appeal the decision of the administrator to the board of adjustment.

3.5.3 *Approval criteria.* Uses permitted subject to special use review criteria shall be permitted only after review and approval by the County of Lee Board of Adjustment only if the applicant demonstrates that:

3.5.3.1 The use or development is located, designed, and proposed to be operated so as to maintain or promote the public health, safety, and general welfare;

3.5.3.2 The use or development complies with all required regulations and standards of this ordinance, including all applicable provisions of articles 3 and 6 and with all other applicable regulations;

3.5.3.3 The use or development is located, designed, and proposed to be operated so as to maintain the value of contiguous property, or that the use or development is a public necessity; and

3.5.3.4 The use or development conforms to the Comprehensive Plan.

3.5.4 *Scope of approval.*

3.5.4.1 The approval of a special use permit shall authorize the applicant to apply for final site plan approval pursuant to section 3.6 of this ordinance. All approvals of special use permits require approval of the site plan. Any special use permit approval shall become null and void if a required site plan is not approved within 24 months after the date of the approval. No zoning clearance permit may be issued until the final major site plan and special use permits are approved. Approval of a special use permit does not authorize any development activity.

3.5.4.2 Minor field alterations or minor revisions to approved special uses may be approved by the department of community development if the special use still meets the intent of the standards established with the original approval. Minor alteration/revisions shall be limited to changes that do not increase the intensity, density, or character of the use. If the department of community development determines that the change is not minor, the applicant shall apply for a revised special use permit. The applicant may appeal the decision of the department of community development to the board of adjustment.

3.5.4.3 Violations of any of the conditions shall be treated in the manner as set forth in section 1.6 of this ordinance.

3.5.5 *Recordation.* The applicant shall obtain certification of the approved special use permit from the clerk to the board and shall record this order in the office of the register of deeds of Lee County. The applicant must provide the department of community development a copy of the recorded notification, affixed with the register's seal and the date, book and page number of recording in order to receive approval of the application for a zoning clearance.

3.5.6 *Subsequent applications.* In the event that an application for a special use permit is denied by the board of adjustment, the board of adjustment shall refuse to accept another application for the same amendment on the same property or any portion of the same property within one year of the original hearing. However, the board of adjustment may consider such application within that time if relevant evidence that was not reasonably available at the time of the original hearing is presented.

(Ord. of 9-19-2005)

3.6. Site plan review.

3.6.1 *Purpose.* The site plan review provisions and regulations of this section are intended to promote the safe, functional, and aesthetically pleasing development of property and to ensure that new structures, utilities, streets, parking, circulation systems, yards, and open spaces are developed in conformance with the standards of this ordinance. The site plan review considers the siting of structures and related site improvements to promote harmonious relationships with adjacent development.

3.6.2 *Major/minor site plan defined.* No application for development approval in the following categories shall be approved unless a site plan has been approved in accordance with the procedures prescribed in this section.

- (a) The following shall require minor site plan approval:
 - An application for development approval requesting a non-residential use or any multi-family dwelling unit, which is permitted by right in the applicable zoning district.
 - Any application for approval of a use for which a site plan is required pursuant to article 5 of this ordinance.
- (b) The following applications shall require major site plan approval:
 - Any application for approval of a planned unit development (PUD), traditional neighborhood development (TND), or transit-oriented development (TOD) district.
 - An application for approval of a special use permit.
- (c) The foregoing approvals shall be referred to in this section as the "Underlying Zoning Application."

3.6.3 *Exemptions.* Detached single-family dwelling units and duplex developments on individual lots of record shall be exempt from the provisions of this section. Detached single-family dwelling units and duplexes on individual lots of record shall be reviewed in accordance with subsection 3.2.3.

3.6.4 *Conformity WITH approved plan.* Development activities subject to the requirements of this section may be carried out only in substantial conformance with the approved site plan and attached any conditions or restrictions. Any substantial deviation from the approved site plan, unless approved in advance and in writing by the department of community development, shall be deemed a violation of this ordinance. Further, no certificate of compliance shall be issued if the development activities do not conform to the approved site plan.

3.6.5 *Approval procedure for minor site plans.* Approval of a minor site plan is a one-step process. The applicant submits a minor site plan for approval by the department of community development and an application for a zoning clearance permit. If the site plan is complete, but does not conform to the provisions of this ordinance and/or required conditions (if applicable), the department of community development shall deny the site plan and return to applicant for revision and resubmission.

3.6.6 *Approval procedure for major site plans.*

3.6.6.1 *Generally.* Approval of a major site plan is a two-step process. As the first step, the applicant submits a preliminary site plan for review by the department of community development, which is accompanied by an application for a special use permit, conditional zoning, or a rezoning to a zoning district for which a major site plan is required. As the second step, after the decision-making agency renders its decision on the underlying zoning map amendment and/or special use permit application, the applicant files a final site plan for approval by the department of community development and an application for a zoning clearance permit.

3.6.6.2 *Preliminary site plan.*

- (a) The department of community development shall determine whether the application for a preliminary site plan is complete as prescribed in appendix B.

- (b) If the preliminary site plan is complete, the department of community development shall forward the application, along with the zoning amendment or special use permit application, to the planning commission as prescribed in section 3.4, or the board of adjustment as prescribed in section 3.5. If the preliminary site plan is incomplete, the department of community development shall return it to the applicant with a statement of the reasons why the proposed preliminary site plan does not conform to the provisions of appendix B.

3.6.6.1 *Final site plan.* After a final decision to approve, or approve with conditions the zoning map amendment or special use permit application and preliminary site plan, the applicant may file an application for final site plan approval. The final site plan shall be prepared and submitted to the department of community development in the same manner as set forth in subsection 3.6.5, above.

3.6.7 *Final inspection.* The department of community development shall inspect the site for compliance with the approved site plan before a zoning clearance permit is issued for the project. The department of community development will write a letter to the applicant stating any deficiencies.

3.6.8 *Scope.*

3.6.8.1 The department of community development will sign and date the site plan to indicate approval. Approval shall become effective immediately.

3.6.8.2 The owner of a use or property subject to the site plan will be notified if site plan approval must be suspended. Suspension is caused by 1.) violation of any applicable provision of this section, or 2.) failure to comply with any applicable required conditions.

3.6.8.3 If ownership changes of the site plan or structure in question, the site plan approval remains valid. (Ord. of 9-19-2005)

3.7 Appeals and variances.

3.7.1 *Purpose.* The purpose of this section is to protect the rights of applicants, landowners, and affected persons by providing procedures for appeals from decisions of administrative officials and variances from the provisions of this article. This section implements the provisions of G.S. §§ 160A-388 and 153A-345.

3.7.2 *Applicability.* This section applies to any of the following:

- (1) Appeals from and review any order, requirement, decision, or determination made by an administrative official charged with enforcing an this ordinance, as prescribed in G.S. § 160A-388(b) in incorporated areas and the ETJ and § 153A-345(b) in unincorporated areas outside of the ETJ; and
- (2) An application for a variance as prescribed in G.S. § 160A-388(d) in incorporated areas and the ETJ and § 153A-345(d) in unincorporated areas outside of the ETJ.

3.7.3 *Decision.*

3.7.3.1 The application shall be considered by the appropriate board of adjustment following receipt of a complete application and appropriate notification of meeting. The board of adjustment shall conduct a hearing on the appeal pursuant to the procedures established in G.S. §§ 153A-345 and 160A-388 and § 3.1.7.2 of this ordinance.

3.7.3.2 Appeals from the decision of the board of adjustment shall be filed with the Clerk of Lee County within 30 days of the final decision of the board. The board of adjustment's decision shall be considered a final decision upon filing of the board's order in the clerk to the board's office.

3.7.4 *Approval criteria.*

3.7.4.1 *Appeal of decision.* In an appeal to the board of adjustment, regarding an administrative decision or interpretation, the board's scope of review shall be limited to determining whether the decision or interpretation by the department of community development was in accordance with the intent and requirements of this ordinance, and accordingly, the board will affirm, modify or reverse the decision.

3.7.4.2 *Application for variance.* A variance is not a right. It may be granted to an applicant only if the applicant establishes compliance with the criteria established in G.S. §§ 153A-345(d) and 160A-388(d).
(Ord. of 9-19-2005)